

From the Editors

This issue of the Journal features a symposium on the legal academy and the War on Terror. It explores the significant changes that have taken place in legal education and legal scholarship since September 11, 2001. It reflects also on the impact of the burgeoning legal efforts to challenge contentious policies such as torture, preventive detention, and extraordinary rendition. Two of the articles seek to come to grips, in addition, with the relative continuity between the policies of the Obama Administration and those of the prior Bush Administration—a continuity surprising, and disappointing, to many who supported Obama’s candidacy.

The symposium opens with an article by Peter Margulies on “the ivory tower at ground zero.” He explores the evolution of doctrinal reactions to the War on Terror, arguing that too much emphasis on “doctrinalism” has limited the impact of scholarship and the legal activism that draws on it. The second article, by Sarah Ludington, puts the legal activism of the current generation in perspective. Looking at the situation during the Second World War, she asks why the legal academy was for the most part silent about governmental policies such as the detention of Japanese-Americans—in stark contrast to what happened in the wake of September 11. Ludington suggests that the academic context is very different today from the earlier period in terms of the economy, the legal infrastructure, academic freedom, and the idea of tenure.

The next article, by Joseph Margulies and Hope Metcalf, looks at the activism of the legal academy with a focus on the limits of the strategy of those who thought the courts and the law would at some point reign in the executive branch. Drawing on the literature on “symbolic politics” and the “myth of rights,” they argue that many in the academy somewhat naively believed that the War on Terror was an aberration—that the excesses represented by the abuse of prisoners at Abu Ghraib, warrantless wiretapping, and the detention of so-called enemy combatants, would inevitably produce a critical reappraisal and the return to “normal,” meaning policies more acceptable to civil libertarians. Whether because of doctrinalism or naiveté about the myth of rights, it is interesting that the authors of the two articles summarizing the current situation are disappointed in the results of the remarkable academic and activist response to perceived governmental overreaching.

Eugene Fidel next assesses the teaching of military law, persuasively noting both the growth in courses on military law in the wake of September 11 and the need for more such courses. He makes the case for better academic

understanding of the issues that have surfaced so prominently in the specialized terrain of military law. We then present a compilation, prepared by Associate Editor Molly Selvin and Editorial Assistant Alicia Olivares, on the large number of courses and clinics that have been created or significantly redirected in response to the events of the past decade. The list is not complete. It was compiled mainly through responses to the Associate Deans's listserv, which were then verified on law school web sites (which led to a few additional courses and also to some deletions). We plan to update the list and post the updates online, so we urge all readers to help us make the list more comprehensive and up to date by emailing us at jle@swlaw.edu.

There is no question—as this symposium makes clear—that the legal academy has responded to the War on Terror by making a huge commitment to teach and write on national security issues and in so doing, institutionalizing national security and related subjects as a part of the curriculum.

We then have two articles on another set of issues—the increasingly important land use and sustainability fields. John Dernbach, in the first article, challenges law schools to see the importance of sustainability issues in terms of teaching and research as well as building design and recycling. He also provides a detailed picture of the state of the field. Patricia Salkin and John Nolon then point out that issues of land use, including sustainability, which are increasingly involved in many areas of life and law, provide perfect vehicles for the kind of innovative teaching favored by recent calls for legal education reform, including the Carnegie Report and Best Practices. The authors also supplement their call for change by carefully assessing the level of innovative teaching that already takes place in this area.

Finally, we have three splendid book reviews which, we think, would justify “buying the issue” on their own. The first is by Robert Gordon on Melvin I. Urofsky's *Louis D. Brandeis: A Life*. The review covers the book, the literature more generally, and also the terrain of Brandeis as an icon of the legal profession. What does Brandeis stand for today? What does he have to offer to this generation of students and lawyers? Gordon finds him to be, if anything, more relevant than ever. The second book review is Nancy Reichman's examination of *Liquidated: An Ethnography of Wall Street*, by anthropologist Karen Ho. The review both whets one's appetite for the book and highlights a set of issues about the social construction of the world that investment bankers inhabit. That world in the first place resembles the organizational world of corporate law firms—including, for example, elite hiring and a culture of late night work. The investment banks and those around them also compete for young talent and desirable clients, and they produce an ideology that has a profound

impact on the law and the legal academy. The third review is by Angela Riley focusing on the book by Frank Pommersheim, *Broken Landscape: Indians, Indian Tribes, and the Constitution*. The review more generally asks—and responds with thoughtfulness and subtlety—what can be done to rebuild some of the core elements of Indian law after their erosion through a series of Supreme Court cases.

As always, we hope that you enjoy reading this issue, and we invite comments and suggestions for future issues.

Bryant G. Garth
Gowri Ramachandran
Molly Selvin

